CORRESPONDENCE.

GARNISHMENT OF A NON-RESIDENT—REPLY.

Editor Virginia Law Register:

A contribution from the pen of Mr. J. W. Read appears in the July number of the REGISTER, p. 235, in which the conclusion is reached that "there is no provision made for a garnishment proceeding against a non-resident. See Code, sec. 3609." But, with some diffidence, the writer is constrained to express an opinion to the contrary.

Let us take the case as stated by Mr. Read: "But suppose the case had been brought in a court of record and the amount involved $1,000; would not the creditor still have been without remedy? In other words, if A had a judgment against B for $100, and C, of North Carolina, owes B $500 and has $1,000 on deposit in the Lynchburg National Bank, how would A reach this fund?"

The answer is, either by attachment or garnishment.

It is a fundamental and well settled principle of law, that the courts of one State have no extra-territorial jurisdiction; that process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them; and publication of process or notice within the State in which the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his *personal* liability.

And it is this doctrine upon which Mr. Read appears to rely in support of his opinion.

But in the case supposed, surely this cannot prevent relief; surely a State must not stand with its hands tied, unable to administer relief or protection to its own citizens, and that too in respect to property rights within its own borders. Surely such an anomaly is not presented.

The funds of C in the Lynchburg National Bank are under the protection and authority of the laws of the State of Virginia, so long as they are within her borders, and she cannot be denied the exercise of that authority. When the rights of her own citizens are involved in such funds, their rights will be allowed and protection granted so long as such funds remain under her protection.

The law assumes that property is always in the possession of its owner, in person or by agent, and proceeds upon the theory that its seizure will inform him that it is taken into the custody of the court, and that he must look to any proceedings authorized by law upon its condemnation and sale. And such, it seems, must be the law on principle and authority.

Various dicta had been expressed to that effect by eminent jurists. Among them Mr. Justice Story in *Picquet* v. *Swan*, 5 Mass. 35; Mr. Justice McLean in *Boswell* v. *Otis*, 9 How. 336; Cooley's Const. Lim. 404; *Cooper* v. *Reynolds*, 77 U. S. 931, was directly in point.

But if there was any uncertainty on the doctrine up to this point, it was set at rest once and for all in the leading case of *Pennoyer* v. *Neff*, 95 U. S. 714. In this case Mr. Justice Field, speaking for the court, said: "So the State, through its tribu-

nals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and when non-residents deal with them it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunal can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident have no property in the State, there is nothing upon which the tribunal can adjudicate."

It seems hard indeed to get away from the force and logic of such an opinion. But though this decision was so final and sweeping, it made one pre-requisite to such a proceeding by a State court,—*i. e.*, it must take the property to be adjudicated upon under its protection *before* the proceeding *in rem* is instituted; it must be *attached.* And even this nice distinction has been followed in the Virginia statute, Code '87, sec. 2967, making it in effect an attachment-garnishment.

The statute provides: "The plaintiff, his agent or attorney, may . . . . . *designate any person as being indebted to, or having in his possession effects of, the defendant or of the defendants.*" This provision it seems is very intelligible, allowing redress by direct *attachment* in the case of tangible property, and by *garnishmont* in the case of inchoate rights, *debt* being mentioned particularly, and hence is specifically applicable to the case in question.

The statute further provides: "The person so designated is required to appear at the term of the court to which the attachment is returnable, and *to disclose on oath in what sum he is indebted to the defendant,* and what effects of the defendant he has in his hands."

Then comes Mr. Read's question, Suppose the garnishee "does not appear?" The answer is, it is his duty to appear. The court pronouncing judgment has entire jurisdiction over his property, by first attaching it before proceeding to judgment; and since the owner is supposed to be in possession of his property, either in person or by agent, if he does not appear, his rights will be forfeited. The cause is entirely a proceeding *in rem.*

The next question that arises is, "How could the non-resident garnishee be summoned?" Simply by an order of publication. Since the court has jurisdiction over his property, it proceeds by its own methods to summon parties interested.

The court then having jurisdiction over the cause, over the parties, and over the subject-matter, and an effectual way of summoning the non-resident being provided, there seems to be no reason why the court cannot proceed to judgment, and garnish the effects of the non-resident whether he appears or not.

To say that the above method would be an attachment and not a garnishment proceeding, because the attachment must first be followed, would be but "sticking in the bark."

Reference is made to Mr. Read's article for a clearer understanding of the point at issue; but with great deference to the opinion of Mr. Read, the writer is constrained to hold to the contrary.

Richmond, Va., July 21, 1897. HUNSDON CARY.